

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

VENESSA ADDALLI,

Plaintiff,

v.

PATRICK BOYER, ESQUIRE and
MACELREE HARVEY, LTD.,

Defendants.

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C.A. No. K19C-06-028 WLW

Submitted: July 1, 2020
Decided: October 29, 2020

ORDER

Upon Defendants' Motion for Summary Judgment.
Granted.

Vanessa Addalli, *pro se* Plaintiff.

John A. Elzufon, Esquire and Loren R. Barron, Esquire of Elzufon Austin & Mondell,
P.A., Wilmington, Delaware; attorneys for Defendants.

WITHAM, R.J.

Before the Court is Defendants Patrick Boyer, Esquire's, (hereafter "Boyer") and MacElree Harvey, LTD.'s, (hereafter "Macelree") Motion for Summary Judgment against Plaintiff Venessa Addalli's (hereafter "Addalli") claim of Legal Malpractice. Addalli filed her Complaint against Boyer and MacElree on June 21, 2019, alleging legal malpractice by breaching the duty of standard of care during Boyer's legal representation of Addalli involving a Family Law matter. Addalli filed an Amended Complaint on August 23, 2019, to which Boyer and MacElree answered on October 3, 2019. This Court issued a Scheduling Order on October 8, 2019, that set the end of discovery for October 20, 2020, and the date of a trial by jury for February 22, 2021. Boyer and MacElree request Summary Judgment be granted because of Addalli's failure to supply an expert witness. For the reasons set forth below, Defendants' motion for summary judgment is **GRANTED**.

A. Factual and Procedural Background

1. Addalli retained Patrick Boyer of MacElree Harvey, LTD. for \$6,000 on November 5, 2015 for the purposes of handling matters related to Addalli's divorce from her husband finalized in March 2015. The matters involved negotiations over division of marital property and custody rights of Addalli's five children which were finalized on June 23, 2016. In the finalized Qualified Domestic Relations Order (QDRO), Addalli was provided a 65/35 percent share in the marital home, retention of a vehicle, 65 percent of a retirement account, and alimony and child support to the sum of \$6,500 a month. Addalli claims that Boyer failed to secure sufficient concessions during the negotiation of this QDRO and thus committed legal malpractice.

2. Addalli ultimately brought this suit on August 23, 2019. Boyer and MacElree answered on October 2, 2019. The Scheduling Order set June 8, 2020 as the cut off for Plaintiff's Expert Discovery. Addalli failed to provide her expert as is required by Delaware case law. On June 9, 2020, Boyer and MacElree filed a Motion for Summary Judgment on the grounds that Addalli failed to provide an expert witness. This Court sent a letter to Addalli on June 17, 2020 instructing Addalli that she has 10 days from the date of the letter to file an answer to Boyer's and MacElree's motion. On June 22, 2020, instead of responding to the motion for summary judgment, Addalli filed a request for an extension of time to provide her expert witness. No expert was retained. On September 22, 2020, this Court sent another letter to Addalli instructing her that she had until the close of discovery, October 20, 2020, to provide the Defense with her expert witness or there would be no choice but to grant Summary Judgment. Addalli failed to provide her expert witness.

B. Standard of Review

3. Motions for Summary Judgment will be granted if the moving party can establish that no genuine issues of material fact are present and that entitlement to judgment as a matter of law is warranted.¹ When considering motions for summary judgment, the Court will weigh the evidence in a light most favorable to the non-moving party, and, upon failure by the moving party to show no factual questions exist, the burden of the non-moving party is to show the existence of factual questions

¹*Bailey v. Commercial Joint Venture, LLC*, 2013 WL5492544 at *1 (Del. Super. Sep. 30, 2013).

beyond what is pleaded in the complaint.²

4. In matters involving accusations of legal malpractice, the plaintiff must provide expert testimony showing that the accused attorney breached his duty of care and that the breach caused the injury suffered by the plaintiff.³ If the plaintiff fails to provide expert testimony, then the alleged professional mistake must be such that a layman would be able to find that there was negligence.⁴ Failure to provide expert testimony on the part of the plaintiff is fatal to plaintiff's case.⁵

C. Discussion

5. A year has passed since Addalli filed her Amended Complaint against Boyer and MacElree for legal malpractice. Over a year has passed since Addalli was required to provide her expert testimony showing that allegations of breach of standard of care against Boyer has merit. Furthermore, this Court has been very accommodating to Addalli, as she is a pro se plaintiff with her hands full raising five children. Given the above, this Court sees no need for Boyer and MacElree to endure any longer the "uncertainty of these serious allegations."⁶

6. The reasons for requiring that plaintiff's provide expert testimony when leveling accusations of legal malpractice is so that the expert can clarify how the

²*Id.*

³*Middlebrook v. Ayres*, 2004 WL1284207 at *5 (Del. Super. June 9, 2004).

⁴*Id.*

⁵*Id.*

⁶Def.'s Response to Plaintiff's Request for Extension of Time at para. 6.

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“representation was inadequate, what damages were caused and how [the plaintiff’s] conduct should factor into damages, and whether the alleged inadequate representation was the proximate cause of [plaintiff’s] damages.”⁷ Had Boyer and MacElree requested a bench trial instead of a jury trial, Addalli would not have had to provide expert testimony showing a breach of the standard of care that an attorney owes his client “because the Court knows the applicable standard of care.”⁸ Because of the failure to provide expert testimony on the part of Addalli, this case is ripe for Summary Judgment.

WHEREFORE, for the foregoing reasons, Defendants Boyer’s and MacElree’s Motion for Summary Judgment is **GRANTED**.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh

⁷*Lorenzetti v. Enterline*, 2012 WL1383186 at *1 (Del. 2012).

⁸*Cannon v. Poliquin*, 2020 WL1076051 at *1 (Del. Super. Mar. 5, 2020).